

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

HB 183 - SB 249

March 12, 2011

SUMMARY OF BILL: *State contracts for legal services.* Requires a competitive procurement process and a hearing before the House and Senate Judiciary Committees or other appropriate standing committees of the General Assembly prior to a state agency's entering into a contract for legal services exceeding \$1 million. The committees may hold a hearing within 30 days of referral of the proposed contract to the committees and shall issue a report to the referring agency, including any recommended changes. The final contract shall be filed with the Clerks of the House and Senate. If a proposed contract requires review while the General Assembly is not in session, the Governor, with the unanimous consent of the Speakers of the House and Senate, may establish a five-member joint committee of legislators, one each appointed by the Governor, the Speaker of the House, the Speaker of the Senate, the minority leader of the House, and the Minority Leader of the Senate to perform the review duties. If the final contract does not contain the changes recommended by each committee, a letter shall be filed by the agency with the General Assembly stating the reasons that the changes were not included. Requires outside counsel to file with the agency a final fees and costs report on any contingent fee contract. Limits effective rate, based on hours worked and fee charged, to \$1,000 per hour in contingent fee cases.

Health care liability actions. Excludes evidence of admission of fault or offers to provide corrective or remedial treatment relating to pain, suffering, injury or death of a patient in any health care liability action or disciplinary or regulatory proceeding against a health care provider. Requires an expert witness in these cases to practice the same specialty as the defendant. Requires, rather than authorizes, complaint in health care liability action to state a demand for a specific sum. Limits recovery of damages, in addition to other elements authorized by law, to loss of earned income rather than loss of earning capacity. If the damage award exceeds \$75,000 in future damages, any party may request periodic payment of future damages. Limits attorney's contingent fee percentages based on a sliding scale of the damages awarded. Requires the plaintiff to file contemporaneously with the complaint a HIPAA-compliant medical authorization form.

Product liability actions. Eliminates claim that a product was unreasonably dangerous as the sole basis for a product liability action. Requires, instead, that a product be defective or unreasonably dangerous due to a defective condition. Adds proof requirements for claimants in these actions.

Economic damages in civil cases. Limits recovery of economic damages in all civil actions other than health care liability actions to the costs of reasonable and necessary medical care, rehabilitation services and custodial care, loss of services, and loss of earned income, rather than loss of earning capacity.

Asbestos litigation. Limits liability of successor entity in asbestos-related litigation to the fair market value of gross assets of the transferor at the time of the transfer, or an earlier transfer if the transferor had previously assumed those liabilities. Creates standards for legal claims for asbestos-related injuries. Requires plaintiff to demonstrate, in a claim for injury other than mesothelioma, based on competent medical evidence, that exposure to asbestos was a substantial contributing factor to an actual physical impairment. Establishes separate standards for claims based on mesothelioma.

Non-economic damages in civil actions. Limits non-economic damages in any civil action to \$250,000 against each defendant or a maximum of \$500,000 for each occurrence that is the basis of the action. Damages for non-economic damages include physical and emotional pain and suffering, inconvenience, physical impairment, disfigurement, loss of enjoyment of life, loss of consortium, and injury to reputation. Excludes medical costs recovered from another source, lost earning capacity, other loss of income, funeral and burial expenses, and the economic value of household services. Places limits on punitive damages according to the number of employees of the defendant. Prevents award of punitive damages for allegedly defective drug or medical device if the product was manufactured and labeled in accordance with the federal Food, Drug, and Cosmetic Act or, if an over-the-counter drug, the drug complied with federal regulations, was generally recognized as safe and effective, was properly branded, and satisfied the conditions of an applicable monograph.

Tennessee Consumer Protection Act. Requires proof that a deceptive act or practice caused the consumer to enter into the transaction that caused the consumer's damages. Requires proof of actual out-of-pocket loss. Prohibits class actions under the Act.

Peer review committees. Makes non-substantive changes to the peer review statute.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures - \$1,500/Each One-Day Meeting

Assumptions:

- Legislators serving on an ad hoc joint committee for contract review will receive per diem and travel reimbursement for meetings. Travel and per diem expenses for five legislative members of \$1,514.80 per meeting (\$176 per diem plus \$126.96 mileage for each member).
- The various changes to the legal system and the Tennessee Consumer Protection Act may result in a decrease in civil litigation but will not significantly reduce the case load of the trial and appellate courts.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in blue ink, appearing to read "James W. White". The signature is fluid and cursive, with the first name "James" written in a smaller, more compact script than the last name "White".

James W. White, Executive Director

/lsc